STATE OF CALIFORNIA

Memorandum

To: **Jim Rathlesberger** Date: May 6, 2008
Executive Officer
Board of Podiatric Medicine

From: **Department of Consumer Affairs**
Legal Office

Subject: **Are Partnerships Consisting of MDs and DPMs Illegal?**

I. Issue

At least one HMO has apparently taken the position that it is illegal for Doctors of Podiatric Medicine (DPMs) to practice in a partnership with Physicians and Surgeons (MDs). You asked me to prepare a legal memorandum on this subject.

II. Conclusion

Under the Medical Practice Act, MDs and DPMs can form a partnership provided that:

1) The MDs have a majority interest and control; and
2) The DPMs are not involved in matters that are outside the scope of their practice.

III. Discussion

A. B. & P. Code Section 2416

Partnerships between MDs, Osteopathic Physicians and Surgeons (DOs), and DPMs are specifically addressed in the Medical Practice Act. Business and Professions Code Section 2416 provides in part that:

> Physicians and surgeons and doctors of podiatric medicine may conduct their professional practices in a partnership or group of physician and surgeons or a partnership or group of doctors of podiatric medicine, respectively. Physician and surgeons and doctors of podiatric medicine may establish a professional partnership that includes both physician and surgeons and doctors of podiatric medicine, if both of the following conditions are satisfied:
>
> (a) A majority of the partners and partnership interests in the professional partnership are physicians and surgeons or osteopathic physician and surgeons.
>
> (b) . . . [A] partner who is not a physician and surgeon shall not practice in the partnership or vote on partnership matters related to the practice of medicine that are outside his or her scope of practice. All partners may vote on general administrative, management, and business matters.

Although this language is fairly clear, some explanations are in order.

1) When Section 2416 refers to "physicians and surgeons," it includes DOs as well as MDs. (See B. & P. Code § 2453(a).)
2) Thus, a partner who is not a physician and surgeon can only be a DPM.
3) The reference to a "majority of partners ***and*** partnership interests" means a majority of the partners must be physicians and surgeons ***and*** that they must have an aggregate ownership interest which is greater than 50%.
4) The first sentence of Section 2416 states the obvious. MDs/DOs and DPMs may conduct their practice in partnerships consisting exclusively of MDs/DOs, on the one hand, or DPMs on the other.
5) The second sentence takes the next step. "Physicians and surgeons [MDs/DOs] ***and*** [DPMs] may establish a professional partnership that includes ***both [or all of these professions]***."

The argument against joint MD/DPM partnerships has apparently focused on language in Section 2416(b) which states that a partner "who is not a physician and surgeon [i.e. a DPM] shall not ***practice*** in the partnership." As the reasoning goes, DPMs could be members of the partnership, but not ***practice*** in it.

That misconception is dispelled by the qualifying language which immediately follows. DPMs "shall not practice in the partnership or vote on partnership matters ***related to the practice of medicine that are outside his or her scope of practice***." If a DPM could not practice at all, this language would make no sense.

Subdivision (a) further provides that medical professionals including DPMs "may establish a ***professional*** partnership." That can include partnerships with MDs or DOs. If a DPM could not practice his or her profession within such a partnership, it would hardly be a "***professional***" one. It therefore should be clear that the phrase "shall not practice in the partnership" it has to do with "matters related to the practice of medicine that are outside [the] scope of practice [of a DPM]."

B. Legislative History

Reading Section 2416 in a way which would prohibit DPMs from practicing in a partnership with MDs is further undercut by its Legislative History. As originally enacted in 1980, Section 2416 read as follows:

> Physicians and surgeons and podiatrists may conduct their professional practices in a partnership or group of physicians and surgeons or a partnership or group of podiatrists, respectively. (Stats. 1980, ch. 1313, § 2 at 4495.)

In 1995, it was rewritten into its present form. (Stats. 1995, ch. 708, § 11 at 5335 – 36 (SB 609).) The Summary Digest for the amending legislation stated that:

> Existing law authorizes physicians and surgeons and podiatrists to conduct their professional practices in a partnership or group of physicians and surgeons or a partnership or group of podiatrists, respectively.
>
> This bill ***would also authorize*** physicians and surgeons ***and*** podiatrists ***to conduct their professional practices*** in a partnership of physicians and surgeons ***and*** podiatrists, subject to certain conditions.

C. CMA Commentary

The California Medical Association is in accord. The CALIFORNIA PHYSICIAN'S LEGAL HANDBOOK (2007) which it publishes states that:

> The law appears to permit *only* duly licensed physicians and podiatrists to conduct their professional practices ***together*** in a partnership. *See* Business & Professions Code § 2416, authorizing only such professions to practice jointly in a partnership. . . .
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> . . . Indeed, there are no other statutorily or judicially created exemptions to the corporate practice of medicine bar which permit physicians and allied health care practitioners to enter into professional partnerships . . . . To the contrary, CMA believes that the courts may well conclude that such a partnership compromises a physician's independent medical judgment because partners have *equal* control over the conduct of the partnership's 'business,' . . . .
>
> This conclusion is further supported by the Legislature's amendment of . . . §2416 to . . . authorize physician-podiatrist partnerships so long as (1) a majority of the partners and partnership interests in the professional partnership are physicians and surgeons . . . ; and (2) a podiatrist/partner may not practice in the partnership or vote on partnership matters related to the practice of medicine. (*Id*., Vol. 4 at 16:39 - 40.)

Given these authorities, any interpretation of Section 2416 which would prohibit DPMs from practicing in a partnership with MDs is legally untenable.

DOREATHEA JOHNSON
Deputy Director
Legal Affairs

By George P. Ritter
Senior Staff Counsel